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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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# No. 1345

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INTERNATIONAL SHOE COMPANY,
*Appellant,*

*vs.*

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT AND E. B. RILEY, COMMISSIONER

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APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

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## STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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SMITH TROY,
*Attorney General of Washington,*
GEORGE W. WILKINS,
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*Counsel for Appellees.*

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IN THE

# SUPREME COURT OF THE UNITED STATES OF AMERICA

**OCTOBER TERM, 1944**

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## No. 1345

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INTERNATIONAL SHOE COMPANY A CORPORATION
*Appellant,*

*vs.*

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT AND E. B. RILEY, COMMISSIONER
*Appellee*

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## STATEMENT IN OPPOSITION TO JURISDICTION

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The appellee, State of Washington, Office of Unemployment Compensation and Placement, and E. B. Riley, Commissioner, in opposition to the jurisdiction of the Supreme Court of the United States to review the above-entitled cause on appeal, respectfully represents:

The judgment of the Supreme Court of the State of Washington here in question is valid, notwithstanding that appellant was a foreign corporation and engaged in the

state of Washington solely in interstate commerce, for the reasons herein set forth.

A

Appellee has the power to require payments of contributions to the Washington unemployment compensation fund for the privilege of employing Washington residents to perform services within the state of Washington under the authority of the following laws of the state of Washington and Federal statutes, to wit: Sec. 2, chapter 162, Session Laws of 1937, Rem. Rev. Stat. Supp. Sec. 9998-102; Sec. 7(a), Chapter 162, Session Laws of 1937, as amended by Sec. 5, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-107(a); Sec. 7(b), chapter 162, Session laws of 1937, as amended by Sec. 5, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-107(b); Sec.(19)(e), chapter 162, Session Laws of 1937, as amended by Sec. 16, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-119a(e); Sec. 19(f), chapter 162, Session Laws of 1937, Rem. Rev. Stat. Supp., Sec. 9998-119(f); Sec. 19(g)(1)(2)(3)(4) and (5), chapter 162, Session Laws of 1937, as amended by Sec. 16 of chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-119(g)(1)(2)(3)(4) and (5); 53 Stat. 187, as amended by 53 Stat. 1391, 26 U.S.C., Sec. 1606(a); Sec. 19(m), chapter 162, Session Laws of 1937, as amended by Sec. 16, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-119a(m). The cited statutes are set forth in Appendix "A" attached hereto and by reference made a part hereof.

The Congress of the United States has specifically precluded avoidance of liability for state unemployment compensation contributions on the ground of being engaged in interstate commerce (26 U. S. C., Sec. 1606(a)) and this court has recognized the power of a state to require such contributions from those engaged within its boundaries

solely in interstate commerce. *Perkins v. Pennsylvania*, 314 U. S. 586, 62 S. Ct. 484; *Inter-Island Steam Navigation Company, Ltd., v. Territory of Hawaii*, 305 U. S. 306, 59 S. Ct. 202; *Standard Dredging Corporation v. Murphy, et al.*, 319 U. S. 306, 63 S. Ct. 1067, 87 L. Ed. 1017.

Moreover, aside from the Act of Congress referred to (26 U. S. C. 1606(a)), liability for contributions to a state unemployment compensation fund cannot be avoided by an employer on the ground that it is a foreign corporation engaged within the boundaries of the state solely in interstate commerce, for a state may in the exercise of its police power, and in the absence of Federal legislation on the subject, legislate concerning relative rights of employers and employees while within its borders, although engaged in interstate commerce. *Valley Steamship Company v. Wattawa*, 244 U. S. 202, 37 S. Ct. 523, 61 L. Ed. 1084. The Washington Unemployment Compensation Act was passed in the exercise of its police power for the purpose of relieving distress resulting from involuntary unemployment affecting the State of Washington. *Bates v. McLeod*, 11 Wn.(2d) 648, 120 P.(2d) 472, relying on *Carmichael v. Southern Coal & Coke Company*, 301 U. S. 495, 57 S. Ct. 868, 81 L. Ed. 1245; and the instant state court decision, *International Shoe Company v. State*, 122 Wash. Dec. 135.

B

Appellant engaged in business through its employees in the state of Washington to such an extent as, in contemplation of law, to be present within the state and therefore amenable to service of process by the state courts.

The stipulated facts in the case at bar, which are fully set forth in the instant state Supreme Court decision, show that appellant was, through its agents in Washington, engaged in a regular systematic and continuous course of

business within the state of Washington. From these facts the state Supreme Court, applying principles of law well settled by this court, has drawn the inference that appellant was present within the state and therefore amenable to process of the state court.

Appellant in its Assignments of Error asserts an insufficient activity within the state of Washington to render it amenable to process of the Washington courts, contrary to the inference drawn by the state Supreme Court from the stipulated facts. Appellant by this appeal seeks only from this court a determination that its activities in the state of Washington were insufficient to permit the inference that it was there present so as to be amenable to the process of the Washington court.

However, the stipulated facts before this court and from which the state Supreme Court drew its inference, are, and the state court specifically recognized them to be, substantially identical to those facts relied on by this court in drawing the same inference in its applicable decisions. *International Harvester Company of America v. Commonwealth of Kentucky*, 234 U. S. 579, 34 S. Ct. 944, 58 L. Ed. 1479; *People's Tobacco Company v. American Tobacco Company*, 246 U. S. 79, 38 S. Ct. 233, 62 L. Ed. 587; *Frene v. Louisville Cement Company*, 134 F. (2d) 511. The inference drawn by the state Supreme Court cannot therefore, be said to be unwarranted; in fact, it is the only reasonable inference.

No new or novel question of law is here involved.

There is no occasion, therefore, for this court to exercise its jurisdiction to hear this appeal, for to do so would result merely in a substitution of this court's inference from the facts for the state court's inference. The Assignment of Error by appellant in this connection is unsubstantial and frivolous.

C

Appellee acquired jurisdiction over appellant by service of process upon an agent of appellant within the state of Washington and also by registered mail to appellant at its last known address in compliance with the statutes of the state of Washington governing service of process on foreign corporations. The statutes mentioned immediately above are Sec. 7, p. 408, Session Laws of 1893, Rem. Rev. Stat. Sec. 226, subsection 9; and Sec. 16(c) of the Washington Unemployment Compensation Act, Sec. 11, chapter 253, p. 906, Session Laws of 1941, Rem. Supp. 1941, Sec. 9998-114c. These cited statutes are set forth in Appendix "B" attached hereto and by reference made a part hereof.

Jurisdiction over a foreign corporation, present within the state, admittedly may be acquired by service on an agent of such corporation. The state statutes provide for such service (Sec. 7, p. 408, Session Laws of 1893, Rem. Rev. Stat. Sec. 226, subsection 9; and Sec. 14(c) of the Washington Unemployment Compensation Act, Sec. 11, chapter 253, p. 906, Session Laws of 1941, Rem. Supp. 1941, Sec. 9998-114c) and are plainly valid and constitutional as written.

The state Supreme Court has determined that the individual upon whom service of process was had in the instant case represented appellant in such capacity as to be its "agent" within the meaning of the state statutes in question. The conclusion that such an individual, with such determined representative capacity, is an "agent" within the meaning of the state statutes is a matter solely for the state court to decide and is binding upon this court.

Appellant by its Assignment of Error in this respect seeks a determination by this court that the individual, found by the state Supreme Court to be a true representative of appellant and an agent within the meaning of the

state statutes, was not in fact a true representative of appellant and that, therefore, due process has not been afforded.

Appellant in effect is asserting that the agent upon whom service was had in this cause was limited solely to the solicitation of orders within the state of Washington and, consequently, had no such authority as to render service on him valid service on appellant. The real question turns upon the actual character of the agent, whether he be such an agent (appellant's activities in the state being considered) that the law will imply the power and impute the authority to him (to accept service for and on behalf of appellant). If he be that kind of an agent, the implication will be made and the authority imputed despite the denial of authority on the part of appellant. *Chicago Board of Trade v. Hammond Elevator Company*, 198 U. S. 424, 25 S. Ct. 740, 49 L. Ed. 1111. Here there is a law of the state governing the service of process on foreign corporations (Rem. Rev. Stat. Sec. 226, subsection 9; Rem. Supp. 1941, Sec. 9998-114c) and the character of the agency relationship is such as to render it fair, reasonable and just to imply an authority on the part of the agent to receive service. Consequently, the law will and ought to draw such an inference and imply such authority. Service under such circumstances and upon an agent of such character as was the individual upon whom service was had in the case at bar is sufficient. The state Supreme Court so ruled. *Connecticut Mutual Life Ins. Co.* v. *Spratley*, 172 U. S. 602, 617, 43 L. Ed. 569, 574, 19 S. Ct. 308. The state court drew its inference (that the individual upon whom service was had was a true representative of appellant and a duly authorized agent) from facts substantially identical to those from which similar inferences were drawn by this and other courts in applicable decisions (*International Harvester Company of America* v. *Commonwealth of Kentucky*,

234 U. S. 579, 34 S. Ct. 944, 58 L. Ed. 1479; *Frene* v. *Louisville Cement Company*, 134 F. (2d) 511; *Tauza* v. *Susquehanna Coal Company*, 220 N. Y. 259, 115 N. E. 915), and therefore did not deny due process; hence, the question raised by appellant in respect to valid service, having been resolved by legitimate and reasonable inference by the state court through application of principles well settled by this court, is unsubstantial and frivolous.

Now, therefore, It is hereby respectfully submitted that the questions raised by appellant in its Assignments of Error are frivolous and unsubstantial in nature; consequently, this court should not exercise its jurisdiction to review the above-entitled cause on appeal. The appeal should be dismissed or in the alternative the judgment of the state Supreme Court should be affirmed.

Respectfully submitted,

SMITH TROY,
*Attorney General of the State of Washington,*
GEORGE W. WILLIAMS,
*Assistant Attorney General,*
*Of Counsel,*
*Attorneys for Appellee.*

## APPENDIX "A"

Statutes of the State of Washington and Federal Statute Vesting Power in Appellee to Require Payments of Contributions to the Washington Unemployment Compensation Fund for the Privilege of Employing Washington Residents to Perform Services Within the State of Washington.

Section 2, chapter 162, Session Laws of 1937, Rem. Rev. Stat. Supp., Sec. 9998-102:

> "Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of sharing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of poor relief assistance. The State of Washington, therefore, exercising herein its police and sovereign power endeavors by this act to remedy the widespread unemployment situation which now exists and to set up safeguards to prevent its recurrence in years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this act shall be liberally construed

for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum."

Section 7(a), chapter 162, Session Laws of 1937:

"(1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 19(g)) occurring during such calendar year, such contributions shall become due and be paid by each employer to the treasurer for the fund in accordance with such regulation as the director may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ;

"(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent."

Section 7(a), chapter 162, Session Laws of 1937, in so far as pertinent, was amended by Sec. 5, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-107(a), to read as follows:

"(1) On and after January 1, 1937, * * * such contributions shall become due * * * in accordance with such regulation as the *commissioner* may prescribe, * * *;

"(2) * * *"

Section 7(b), chapter 162, Session Laws of 1937:

"(b) Rate of Contribution.—Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

"(1) One and eight-tenths (1.8%) per centum with respect to employment during the calendar year 1937;

"(2) Two and seven-tenths (2.7%) per centum with respect to employment during the calendar years 1938, 1939, 1940, 1941;

"(3) With respect to employment after December 31, 1941, the percentage determined pursuant to subsection (c) of this section."

Section 7(b), chapter 162, Session Laws of 1937, in so far as pertinent, was amended by Sec. 5, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-107(b), to read as follows:

"(b) • • •

"(1) • • •

"(2) Two and seven-tenths (2.7%) per centum with respect to employment during the calendar years *thereafter.*" (Subparagraph (3) of section 7(b), chapter 162, Session Laws of 1937, was deleted by the amendment by Sec. 5, chapter 214, Session Laws of 1939.)

Section 19(e), chapter 162, Session Laws of 1937:

"'Employing unit' means any individual or type of organization, including any partnership, association, trust estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ eight or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act."

Section 19(e), chapter 162, Session Laws of 1937, in so far as pertinent, was amended by Sec. 16, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-119a(e), to read as follows:

"'Employing unit' means any individual • • • which has or subsequent to January 1, 1937, had in its employ *one* or more individuals • • •

"*Whenever any employing unit contracts with or has under it any contractor or sub-contractor for any work*

*which is part of its usual trade, occupation, profession or business unless the employing unit as well as each such contractor or sub-contractor is an employer by reason of section 19(f) or section 8(c) of this act, the employing unit shall for all the purposes of this act be deemed to employ each individual in the employ of each such contractor or sub-contractor for each day during which such individual is engaged in performing such work; except that each such contractor or sub-contractor who is an employer by reason of section 19(f) or section 8(c) of this act shall alone be liable for the employer's contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or sub-contractor who is not an employer by reason of section 19(f) or section 8(c) of this act, may recover the same from such contractor or sub-contractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee: PROVIDED, The employing unit had actual or constructive knowledge of the work.*"

Section 19(f), chapter 162, Session Laws of 1937, Rem. Rev. Stat., Supp., Sec. 9998-119(f):

"'Employer' means:

"(1) Any employing unit which in each of twenty different weeks within either the current or the preceding calendar year (whether or not such weeks are or were consecutive) has or had in employment eight or more individuals (not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week);

"(2) • • •

"(3) • • •

"(4) * * *

"(5) * * *

"(6) * * *."

Section 19(g)(1)(2)(3)(4) and (5), chapter 162, Session Laws of 1937:

"(g)(1) 'Employment,' subject to the other provisions in this subsection, means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

"(2) The term 'employment' shall include an individual's entire service performed within or both within and without this state if: (i) The service is localized in this state; or (ii) the service is not localized in any state but some of the service is performed in this state and (a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

"(3) Services not covered under paragraph (2) of this subsection, and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the Federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the director approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

"(4) Service shall be deemed to be localized within a state if:

"(i) The service is performed entirely within such state; or

"(ii) The service is performed both within and without such state, but the service performed without the state is incidental to the individual's service within such state, for example, is temporary or transitory in nature or consists of isolated transactions.

"(5) Services performed by an individual for remuneration shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the director that:

"(i) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

"(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

"(iii) Such individual is customarily engaged in an independently established trade, occupation, profession or business, of the same nature as that involved in the contract of service."

Section 19(g)(1)(2)(3)(4) and (5), chapter 162, Session Laws of 1937, in so far as pertinent, was amended by Sec. 16, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-119(g)(1)(2)(3)(4) and (5), to read as follows:

"(g)(1) * * *

"(2) * * *

"(3) * * * and the *commissioner* approves the election * * *.

"(4) * * *:

"(i) * * *

"(ii) * * *

"(5) * * * until it is shown to the satisfaction of the *commissioner* that:

"(i) * * *.

"(ii) * * *.

"(iii) * * *.

53 Stat. 187, as amended by 53 Stat. 1391, 26 U.S.C., Sec. 1606(a), provides:

> "No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce."

Section 19(m), chapter 162, Session Laws of 1937:

> "(m) 'Wages' means remuneration payable by employers for employment. 'Remuneration' means all compensation payable for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. The reasonable cash value of compensation payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the director."

Section 19(m), chapter 162, Session Laws of 1937, in so far as pertinent, was amended by Sec. 16, chapter 214, Session Laws of 1939, Rem. Rev. Stat. Supp., Sec. 9998-119a(m), to read as follows:

> "(m) 'Wages' means *the first three thousand dollars of* remuneration payable by *one employer to an individual worker* for employment *during any calendar year*. 'Remuneration' means all compensation payable for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. The reasonable cash

value of compensation payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the director; *but until Congress shall amend title IX of the Federal Social Security Act approved August 14, 1935, to similarly limit the amount of taxable wages to three thousand dollars the term 'wages' for the purposes of this act shall be deemed to mean all remuneration payable by employers for employment.*"

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## APPENDIX "B"

STATUTES PROVIDING FOR ACQUISITION OF JURISDICTION OF APPELLEE OVER A FOREIGN CORPORATION PRESENT WITHIN THE STATE OF WASHINGTON THROUGH SERVICE UPON AN AGENT OF SUCH CORPORATION.

Sec. 7, p. 408, Session Laws of 1893, Rem. Rev. Stat. Sec. 226, subsection 9:

"The summons shall be served by delivering a copy thereof, as follows:

"* * *

"(9) If the suit be against a foreign corporation or nonresident joint stock company or association doing business within this state, to any agent, cashier or secretary thereof;"

Sec. 14(c) of the Washington Unemployment Compensation Act; Sec. 11, chapter 253, p. 906, Session Laws of 1941, Rem. Supp. 1941, Sec. 9998-114c:

"At any time after the Commissioner shall find that any contribution or the interest thereon have become delinquent, the Commissioner may issue a notice of assessment specifying the amount due, which notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of summons in a civil action, except that if the employer

cannot be found within the state, said notice will be deemed served when mailed to the delinquent employer at his last known address by registered mail. If the amount so assessed is not paid within ten days after such service or mailing of said notice, the Commissioner or his duly authorized representative shall collect the amount stated in said assessment by the distraint, seizure and sale of the property, goods, chattels and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state."

IN THE

# SUPREME COURT OF THE UNITED STATES OF AMERICA

**OCTOBER TERM, 1945**

## No. 1345

INTERNATIONAL SHOE COMPANY, A CORPORATION,
*Appellant,*

*vs.*

STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT AND E. B. RILEY, COMMISSIONER,
*Appellee.*

## MOTION TO DISMISS APPEAL OR IN THE ALTERNATIVE TO AFFIRM JUDGMENT

Comes now the State of Washington; Office of Unemployment Compensation and Placement, and E. B. Riley, Commissioner, appellee in the above-entitled cause, and respectfully moves that the appeal of the International Shoe Company, a corporation, appellant, above named, be by this court dismissed or in the alternative that this court affirm the judgment of the Supreme Court of the State of Washington from which an appeal has been taken upon the grounds herein stated.

The judgment of the Supreme Court of the State of Washington here in question is valid, notwithstanding that appellant was a foreign corporation and engaged in the State of Washington solely in interstate commerce, for the following reasons which disclose that the questions raised by appellant's Assignments of Error are both frivolous and unsubstantial:

(1) Appellee has the power to require payments of contributions to the Washington unemployment compensation fund for the privilege of employing Washington residents to perform services within the State of Washington.

(2) Appellant engaged in business through its employees in the state of Washington to such an extent as, in the contemplation of law, to be present within the state and therefore amenable to service of process by the state courts.

(3) Appellee acquired jurisdiction over appellant by service of process upon an agent of appellant within the state of Washington and also by registered mail to appellant at its last known address in compliance with the statutes of the state of Washington governing service of process on foreign corporations.

SMITH TROY,
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